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ABSTRACT

This article addresses due process requirements in the nonrenewal and dismissal of tenured and nontenured teachers. The Georgia Fair Dismissal Law is used as a basis for discussing the grounds for teacher dismissal. Dismissal grounds discussed are 1) incompetency; 2) insubordination; 3) willful neglect of duties; 4) immorality; 5) inciting, encouraging, or counseling students to violate any valid law or school board policy; 6) reduction in staff due to loss of students or cancellation of program; 7) failure to secure and maintain necessary educational training; and 8) any other good and sufficient cause. (Author)

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TEACHER DISMISSAL AND DUE PROCESS

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School administrators have shouldered an ever increasing responsibility as the profession of education has moved from in loco parentis toward due process. In previous years, school administrators had a clear charter - everyone knew what the schools were to be doing and the role of all participants. Educational leaders could, and often did, act in an arbitrary manner while carrying out what they perceived their charge to be. However, in recent years we find the society at large no longer unified on its goals. The charter for education is not clean. There are as many demands as there are special interest groups. One of the special interest groups, one that has had many rights formally ratified by various occurrences and court orders, is the classroom teachers.

There is a continuous unfolding of court cases and related events that is more clearly defining the manner

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in which teachers can be treated by administration. Formerly, whenever teachers were involved in anything that administrators perceived as being of an unfavorable nature, there was little or no hesitancy in dismissing the teachers. Now we see that there are many things that teachers can be involved in without facing dismissal. Teachers do not surrender their personal rights when they sign a contract to teach school. Today teachers can involve themselves in any activity that other citizens can as long as it does not impair their effectiveness as a teacher.

Method of Review

A systematic review of literature pertaining to teacher dismissal and due process was conducted in the fall of 1976. A search of the following guides was made in order to determine appropriate books and journal articles:

Current Index to Journals in Education - July, 1972 to October, 1976.

Education Index - July, 1972 to October, 1976.

Research in Education (ERIC) - July, 1972 to October, 1976.

Appropriate listings from the following subject headings were examined: teacher dismissal, due process, school law, civil rights, teacher tenure, academic freedom, court cases, and nontenure.

Listings in reference to teacher dismissal, due process, school law, nontenure and civil rights were placed in the bibliography. An examination of the listings indicated at least three classifications: (1) Nonrenewal; (2) Dismissal; (3) Due process.

Findings

Significant changes occurred in American society during the 1960's as the civil rights movement spread throughout the land. Teachers were the recipients of many undreamed of freedoms due to legislative action, lawsuits, and application of the 1871 Civil Rights Act (Nolte, 1974, p. 48). Educators found themselves faced with situations where expert legal advice was needed on a daily basis. Classroom teachers gained the right to collective bargaining and began to flex their new found muscle throughout major school systems. Written into contracts were provisions similar to those previously held by private sector employees. Legislative and court action determined the scope of collective bargaining (Gatti & Gatti, 1975, p. 51). It was recognized that public employees did have the right to organize.

In order to insure equity and equal protection, provisions were written into contracts specifying in a very restricted manner, the relationship that was to exist between teachers and administrators cleaning up the

public schools in light of their clear understanding of society's desires. Now dismissal laws were subject to careful scrutiny by teacher organizations, lawyers, and the court system. A new element had to be written in, one that allegedly insured fair treatment. The new element specified how teachers were to be treated and insured the full protection of their rights. The new element came to be called due process and marked a significant departure from previous days. It should be noted that whenever it was evident that boards of education were not strictly following teacher dismissal statutes, the dismissals were not valid (Walden, 1974, p. 63).

Due process could not incorporate arbitrary actions on the part of administrators. It required strict adherence to previously established regulations. Many court decisions affirmed this posture and have caused boards of education to move cautiously when contemplating termination. When the laws state that a termination notice must be delivered in writing by a certain date, that is exactly what it means. Failure to receive notification invalidates the dismissal. However, this does not mean teachers can consciously avoid receiving their mail; thereby, circumventing the intent of the law (Walden, 1974, p. 64).

Nonrenewal

Supreme court decisions in 1972 created new guidelines involving the distinction between the tenured and nontenured teacher and what due process must be afforded to each.

Nontenured Teachers

In Roth, the court held that the Constitution does not require opportunity for a hearing involving nonrenewal of a nontenured teacher's contract, unless he can show that the decision not to rehire him deprived him of an interest in "liberty" or that he had a "property" interest in continued employment. If the board of education or one of the administrative staff states reasons for nonrenewal which might be damaging to the teacher's standing and association in the community, full due process must be employed (Linn, 1973, p. 36).

If a probationary teacher is not recommended for renewal of contract, great care should be taken in any statement offered verbally or in writing which might create the necessity of a due process procedure. The avoidance of this procedure will save both time and expense for all concerned.

Tenured Teachers

The court in the Sindermann decision clearly states that although a yearly contract is entered into the fact

of continued employment creates a "property" interest in continued employment, regardless of whether or not there is a formalized tenure statement or policy (Linn, p. 36).

Sindermann points out that a teacher who has held his position for a number of years might be able to show that he has a legitimate claim to job tenure. In other words, a teacher who has been reemployed for a number of years by the same board of education has due process rights whether or not tenure is explicitly stated within policy or in the contract (Linn, p. 36).

The State of Georgia enacted the Fair Dismissal Law in 1975 in an effort to meet, through statutory reform, the requirements set forth by federal court decisions and to provide for "due process" hearings for teachers. Under the Fair Dismissal Law, a person who has taught less than four consecutive years in a school system is considered a nontenured teacher; and by the same token, a person rehired for the fourth consecutive year in the same system is considered a tenured teacher.

An NEA study examining tenure laws in the 50 states and the District of Columbia classified tenure into three categories:

1. Tenure law provides for continuing employment of teachers who under terms of the law have acquired tenure status, and sets forth procedural safeguards against arbitrary and capricious dismissal of tenured teachers.

2. Continuing contract law requires only that the teacher be given advance notice of nonrenewal of the employment contract but does not require cause for dismissal or due process rights to the teacher.

3. Annual or long-term contracts provide no tenure protection for the teacher and impose no responsibility on the board to show cause for dismissal (Hazard, 1975, pp. 451-2).

For both the tenured and nontenured teachers, Georgia Law requires that notice of nonrenewal must be received by the teacher no later than April 15; however, only for the tenured teacher is the due process procedure necessary. The fact that due process is required should not deter the proficient administrator from not recommending an ineffective teacher. The administrator must do his "homework" with the knowledge that he will have to prove his case at a hearing and possibly in a courtroom. The following guidelines should be helpful in developing a case for nonrenewal:

1. Every school should employ formal evaluation.

2. Evaluation forms should be supplemented with written reports of any breaches of regulations or violations of standards of proper conduct.

3. The evaluation process is correct when done <u>with</u> a teacher, not <u>to</u> him.

4. Place all documentation except for certain confidential employment recommendations in a permanent record open to the teacher.

5. Adhere strictly to statutory requirements concerning notice of nonrenewal.

6. Nontenure teachers do not have the right to a statement of reasons why they should be terminated or a hearing concerning nonrenewal.

7. Carefully avoid further sanctions against a teacher once he has been terminated.

8. Probationary teachers may acquire a status almost equivalent to that of tenure teachers if employment practices clearly imply a promise of continued employment.

9. If a hearing is held, only evidence presented at the hearing can be utilized in reaching a final decision.

10. In all cases, school administrators should be able to show that their recommendations for nonrenewal are based on proper evidence (Currier, 1974, p. 571).

Teacher Dismissal

Dismissal of any teacher during the contractual year cannot be initiated without cause or due process procedures. The grounds for termination of a teacher is found at Georgia Code Annotated 32-2101C, which reads:

> The contract of employment of a teacher, principal or other employee having a contract for a definite term may be terminated or suspended for the following reaons: (1) incompetency; (2) insubordination; (3) willful neglect of duties; (4) immorality; (5) inciting, encouraging or counseling students to violate any valid State Law, municipal ordinance, or policy or rule of the local board of education; and (6) for reduction in staff due to loss of students or cancellation of programs; (7) for failure to secure and maintain necessary educational training; and (8) for any good and sufficient cause.

(1) Incompetency.

"Incompetency" and "inefficiency" are synonymous in that both terms relate to a lack of some requisite ability. In the Conley decision, the court defines efficiency to include not only that a teacher know his subject but that he be capable of arousing and holding the interest of his pupils and maintaining discipline. Areas of incompetency would be lack of knowledge of subject matter, failure to maintain classroom control, not being able to adapt to current instructional procedures, harsh treatment of pupils, having an effect on pupils which would cause low morale and develop fear, and adversely effecting the learning rate of pupils (Rosenberger & Plimpton, 1975, pp. 473-5).

In order to develop a strong case for incompetency, the administrator must remember that incompetency can be considered a remediable or a correctable cause and notice should be given to the teacher with sufficient time in which to correct the problem.

(2) Insubordination.

"The public is entitled to an efficiently administered school and the courts will generally support the dismissal of an employee who fails to follow the legitimate order of his or her superior or who is so verbally abusive of his superior that the school's effectiveness is impaired" (Walden, 1975, p. 72).

Teachers have a right under the First Amendment to criticize school operations and their principals who cannot afford the luxury of oversensitivity. However, verbal abuse of a supervisor by an employee may at times exceed the protection of the First Amendment.

(3) Willful Neglect of Duties.

This is closely related to incompetency or gross inefficiency. Failure to keep proper records in a prescribed manner or the failure to perform teaching duties or other reasonable assigned duties falls under this category.

(4) Immorality.

Courts have adopted a liberal view involving the discussion of immorality and have based decisions upon whether or not activities as a private citizen adversely influenced teaching performance.

It is evident that the conduct of teachers is subject to reasonable control by school officials; however, teachers whose nonconventional behaviors are practiced with discretion and with regard to their reputations, particularly when practiced in the privacy of their homes, are likely to meet with the protection of the courts. The delicate balance between the private rights of teachers and the interests of school officials in protecting

the integrity of the educational process is summed up in the principle, "the teacher has a duty to privacy" (Ostrander, 1975, p. 22).

The following are some considerations which may be helpful in making a determination as to whether or not a teacher's conduct indicated fitness to teach:

> (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the anticipated degree of such adversity; (3) the proximity or remoteness in time of conduct; (4) the type of teaching certificate held by the party involved; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the questioned conduct; and (8) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved (La Morte, 1975, p. 458).

(5) Inciting, Encouraging or Counseling students to violate any valid State Law, Municipal Ordinance, or Policy or Rule of the Local Board of Education.

This would involve instances where teachers encourage students to organize and demonstrate in opposition to rules and policies of the school system. This would not include a teacher encouraging students to exercise their First Amendment rights even if there were board policies attempting to prevent students from exercising their rights.

(6) Reduction in Staff due to Loss of Students or Cancellation of Programs.

Where there is statutory authorization or contractual provision, termination or nonrenewal due to reduction in the number of students or the cancellation of programs will be permitted (Harben, 1976, p. 9).

(7) Failure to Secure and Maintain Necessary Educational Training.

Failure to maintain minimum requirements prescribed by the State would justify termination. A good case can be made involving the lack of maintaining necessary educational training as required by accrediting institutions; however, these requirements should be placed in the contractual agreement.

(8) For Any Other Good and Sufficient Cause.

This bears a reasonable relation to a teacher's fitness or capacity to discharge the duties of the position. There cannot be cause given which would infringe upon any constitutional right of the individual; however, some courts have held that "it is a good cause in a statute of this kind which includes any ground put forward by the school board in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the board's task of building up and maintaining an efficient school system" (Harben, 1976, p. 10).

The Fourteenth Amendment

The Fourteenth Amendment of the Constitution was added in 1868. It stated in part that:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

This meant that all citizens of the United States were guaranteed all the rights of other citizens and that a given state could not legislate those rights away. The provision concerning due process is to be duly noted. Due process here primarily means fair treatment for all concerned. Teacher dismissals have not always been situations where due process was accorded to the teacher being dismissed. Due process in actual practice means that a given individual "has been treated essentially the same by state action or local governmental action as another person has under similar circumstances when he is subject to deprivation of life, liberty, or property" (La Morte, 1974, p. 5). Attempts to dismiss teachers who have a property right to their job have proved to be fruitless.

Conclusions

The advent of due process has brought about considerable change in the manner in which school administrators view their employees. The main element of due process is fundamental fairness (Gatti & Gatti, 1975, p. 107). In general terms, this means a fair hearing, a fair trial, and a fair judgment. It means that arbitrary actions cannot be taken by school boards or administrators. The employee must be given a fair opportunity to present his side of a dispute where the dispute involves interests of life, liberty, or property. The greater the seriousness of threatened loss brings about more formalized proceedings to insure due process. There is a difference between the rights of tenured and nontenured personnel.

With school personnel no longer having a clear charter, the work of administrators could fairly easily be summed up by Hudgins (1974, p. 40) in "Ten Commandments you better not break." The commandments are:

1. Don't fire a teacher who has been arrested for possessing marijuana unless you have proof he can no longer function effectively in the classroom.

2. Don't fire a teacher whose discussion of religion stirs up a local furor unless he is advancing or inhibiting a particular faith.

3. Don't fire a teacher for incompetency on the basis of poor student test scores alone.

4. Don't fire a teacher solely for being a homosexual unless his sexual inclination adversely affects teacher performance.

5. Don't fire a teacher for criticizing the school administration unless he is using the classroom to advance his own gain or to promote a special interest.

6. Don't fire a teacher for insubordination unless school regulations are clearly stated or reasonably understood.

7. Don't fire a teacher for using too much creative freedom unless your restrictions were stated clearly and specifically beforehand.

8. Don't fire a tenured teacher without first knowing the nitty-gritty of tenure.

9. Don't fire a teacher for refusing to salute the flag.

10. Don't fire a teacher who brings alcohol into the school unless you can prove "just cause."

Nowhere is it said that educational leadership is easy. Today we find conflicting demands from many directions; some, i.e., teachers that never before exercised those rights guaranteed to them by the Constitution. The advent of due process has meant that school systems must have clearly stated positions and must be consistent in like cases. It has removed the arbitrariness from the administrators grasp. A new dawn is upon education whereby relationships are more formalized and decreed by court decisions. Administrators must be constantly aware of the implications of school law and decisions handed down by the court system under which we live. Section 1984 of the 1871 Civil Rights Act is clear and to the point when it states that individuals who have caused others to be deprived of their civil rights can be personally held

liable. School administrators must be more aware of the applications of due process than ever before. Indeed, their very survival may depend on it.

Today school administrators must keep abreast of law as well as instruction and supervision. It is a difficult challenge. It is one that administrators have met and will continue to meet in years to come.

REFERENCES

Are you 'impartial' enough to fire a teacher? The American School Board Journal, 1975, 162 (12), 9-10.

Currier, Richard J., and Michalak, Daniel. New guidelines for nonrenewal of nontenured teachers. Phi Delta Kappan, 1974, 55, 571.

DeVaughn, J. Everette. Evaluation and due process: Legal aspects. National Elementary Principal, 1973, 52 (5), 88-91.

DeVaughn, J. Everette. Termination and due process - a comment. Journal of Law and Education, 1973, 2, 305-311.

Due process and tenure in institutions of higher education. Today's Education, 1973, 62 (2), 60-62.

Gatti, Richard D., and Gatti, Daniel J. Collective bargaining. Encyclopedic Dictionary of School Law. West Nyack, N.Y.: Parker Publishing Co., 1975.

Harben, Sam S., Jr. Teacher employment and dismissal. The Institute of Continuing Legal Education in Georgia, 1976, 9-10.

Hazard, William R. Tenure laws in theory and practice. Phi Delta Kappan, 1975, 56, 451-454.

Hudgins, H. C., Jr. The law and teacher dismissals. Nations Schools, 1974, 93 (3), 40-43.

Jacobsen, Gene S., Sperry, David J., and Jensen, Boyd F. The dismissal and non-reemployment of teacher. Journal of Law and Education, 1972, 1 (3), 435-448.

Kirp, David L., and Yudof, Mark G. Educational Policy and the Law, Berkeley, California: McCutchan Publishing Corporation, 1974.

Knowles, Laurence W. Can a teacher's vocabulary include four-letter words? Nations Schools, 1972, 90 (1), 39.

La Morte, Michael W. Legal rights and responsibilities of homosexuals in public education. Journal of Law and Education, 1975, 4 (3), 449-467.

La Morte, Michael W. The fourteenth amendment: Its significance for public school educators. Educational Administration Quarterly, 1974, 10 (3), 1-19.

Linn, John Phillip. Roth and Sindermann: Nontenured rights may be constitutional. Nations Schools, 1973, 91 (3), 36.

Martin, David L. If you and your board can handle a crisis like this district's, you probably can handle anything. American School Board Journal, 1974, 161 (5), 23-27.

Nolte, Chester M. A brush up in one short sitting: Ten years of tumult in school law, and their lessons. The American School Board Journal, 1974, 161 (1), 48-51.

Nolte, Chester M. And how hard is it to oust a bad 'professional' teacher? The American School Board Journal, 1972, 159 (6), 21-22.

Ostrander, Kenneth H. The teacher's duty to privacy: Court rulings in sexual deviancy cases. Phi Delta Kappan, 1955, 15, 20-22.

Palmer, Walter H. Due process termination of untenured teachers. Journal of Law and Education, 1972, 1, 469-485.

Reutter, E. Edmund, Jr. Constitutional rights of nontenure teachers. I.A.R. Research Bulletin, 1972, 13.

Rosenberger, David S., and Plimpton, Richard A. Teacher incompetence and the courts. Journal of Law and Education, 1975, 4, 469-486.

Rulings define rights of nontenured teachers. Today's Education, 1973, 62 (5), 53.

Sinowitz, Betty E. What about teacher tenure? Today's Education, 1973, 62 (4), 40-42.

Walden, John C. Insubordination. National Elementary Principal, 1975, 54 (3), 72-74.

Walden, John C. New legal rights for the nontenured teacher. National Elementary Principal, 1972, 51 (4), 103-105.

Walden, John C. Reprise: Due process and the nontenured teacher. National Elementary Principal, 1973, 52 (4), 78-80.

Walden, John C. Teacher dismissal laws. National Elementary Principal, 1974, 53 (4), 63-64.

Walden, John C. Two courts look at insubordination. National Elementary Principal, 1973, 53 (1) 52-54.